

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

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4 RANDY JONES,

5 Plaintiff,

6 v.

7 CLARK COUNTY SCHOOL DISTRICT,

8 Defendant.  
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Case No. 2:15-cv-00010-APG-GWF

**ORDER GRANTING DEFENDANT'S  
MOTION TO DISMISS AND  
GRANTING PLAINTIFF LEAVE TO  
AMEND**

(Dkt. #11)

10 Plaintiff Randy Jones was a school bus driver for defendant Clark County School District  
11 ("CCSD"). He alleges that the school district engaged in a "campaign of harassment,  
12 intimidation and bullying" in order to interfere with his rights under the Family Medical Leave  
13 Act ("FLMA"). He alleges that the school district's harassment inflicted severe emotion distress  
14 on him and resulted in his constructive discharge.

15 The school district moves to dismiss these claims and Jones's request for punitive  
16 damages. (Dkt. #11.) Because the complaint lacks sufficient facts, I dismiss Jones's claims with  
17 leave to amend. And because punitive damages are not recoverable against the school district, I  
18 dismiss Jones's request for punitive damages with prejudice.

19 **I. BACKGROUND**

20 Since August 17, 1998, Jones was employed as a school bus driver by CCSD. (Dkt. #1 at  
21 ¶¶ 5, 15.) Jones allegedly suffered from "adjustment disorder with mixed anxiety and depressed  
22 mood, insomnia, [and] occupational stress," and took "several prescribed medications" for these  
23 conditions. (*Id.* at ¶¶ 19–20.)

24 Around February 2012, Jones's doctor recommended that he take a leave of absence. (*Id.*  
25 at ¶¶ 20, 24.) Jones advised CCSD of his conditions and "sought alternative employment" with  
26 the school district in order to avoid taking time off under the FMLA, but he did not succeed. (*Id.*  
27 at ¶ 25.) On March 13, 2013, Jones filed a charge of discrimination alleging that CCSD denied  
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1 him a reasonable accommodation for his disabilities, forced him to take a leave of absence under  
2 the FLMA, and treated him unfairly because of his disability. (*Id.* at ¶¶ 21–22.) On May 1, 2013,  
3 he was allegedly forced into retirement because he had exhausted his FLMA leave and CCSD  
4 refused to offer him an alternative position. (*Id.* at ¶ 27.)

5 On October 2, 2014, the Equal Employment Opportunity Commission sent Jones a right  
6 to sue letter. (*Id.* at ¶ 5.) On January 5, 2015, Jones commenced this action. The school district  
7 moves to dismiss Jones’s claims for (1) interference with his FLMA rights, (2) constructive  
8 discharge, (3) intentional infliction of emotional distress, and (4) punitive damages.

## 9 **II. ANALYSIS**

10 A properly pleaded complaint must provide a “short and plain statement of the claim  
11 showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2); *Bell Atl. Corp. v. Twombly*,  
12 550 U.S. 544, 555 (2007). While Rule 8 does not require detailed factual allegations, it demands  
13 more than “labels and conclusions” or a “formulaic recitation of the elements of a cause of  
14 action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “Factual allegations must be enough to rise  
15 above the speculative level.” *Twombly* 550 U.S. at 555. To survive a motion to dismiss, a  
16 complaint must “contain [ ] enough facts to state a claim to relief that is plausible on its face.”  
17 *Iqbal*, 556 U.S. at 696 (internal quotation marks and citation omitted).

18 District courts must apply a two-step approach when considering motions to dismiss. *Id.* at  
19 679. First, the court must accept as true all well-pleaded factual allegations and draw all  
20 reasonable inferences from the complaint in the plaintiff’s favor. *Id.*; *Brown v. Elec. Arts, Inc.* 724  
21 F.3d 1235, 1247–48 (9th Cir. 2013). Legal conclusions, however, are not entitled to the  
22 assumption of truth even if cast in the form of factual allegations. *Iqbal*, 556 U.S. at 679; *Brown*,  
23 724 F.3d at 1248. Mere recitals of the elements of a cause of action, supported only by  
24 conclusory statements, do not suffice. *Iqbal*, 556 U.S. at 678.

25 Second, the court must consider whether the factual allegations in the complaint allege a  
26 plausible claim for relief. *Id.* at 679. A claim is facially plausible when the complaint alleges  
27 facts that allow the court to draw a reasonable inference that the defendant is liable for the alleged  
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1 misconduct. *Id.* at 663. Where the complaint does not permit the court to infer more than the  
2 mere possibility of misconduct, the complaint has “alleged—but it has not shown—that the  
3 pleader is entitled to relief.” *Id.* at 679 (internal quotation marks and citation omitted). When the  
4 claims have not crossed the line from conceivable to plausible, the complaint must be dismissed.  
5 *Twombly*, 550 U.S. at 570. “Determining whether a complaint states a plausible claim for relief  
6 will . . . be a context-specific task that requires the [district] court to draw on its judicial  
7 experience and common sense.” *Iqbal*, 556 U.S. at 679.

8 **A. Jones’s claim for interference with his FLMA rights is dismissed with leave to**  
9 **amend.**

10 Jones alleges that CCSD interfered with his FLMA rights by harassing him, giving him  
11 “the run around,” refusing to honor his request for FLMA leave, and requiring him to take sick  
12 time before FLMA leave. (Dkt. #1 at ¶¶ 47, 48.) The school district moves to dismiss this claim,  
13 arguing that Jones exhausted his FLMA leave and voluntarily retired and the complaints’  
14 allegations are legal conclusions couched in the form of factual allegations.

15 CCSD’s first basis for dismissal rests on medical documents that Jones faxed to the school  
16 district on January 18, 2013. (*See* Dkt. #11 at 4.) It states, “[due] to circumstances beyond my  
17 control my doctor ha[s] advised me to retire from driver due to the serious health condition  
18 described above and on the following page. It would be irresponsible of me to drive my special-  
19 need students while on medication and suffering from other symptoms described above.” (*Id.*)  
20 Relying on this document, CCSD asserts that Jones voluntarily retired after he had already  
21 exhausted his FLMA leave, which occurred on October 18, 2012. Jones responds that I should  
22 not consider this document because it is outside the pleadings, and even if I did consider it, his  
23 FLMA claim is plausible.

24 I generally do not consider any material outside of the pleadings when ruling on a Rule  
25 12(b)(6) motion. *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001). However,  
26 “documents whose contents are alleged in a complaint and whose authenticity no party questions,  
27 but which are not physically attached to the pleading, may be considered in ruling on a Rule  
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1 12(b)(6) motion to dismiss” without converting the motion to dismiss into a motion for summary  
2 judgment. *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994).

3 Although Jones does not dispute the authenticity of the medical documents that he faxed  
4 to the school district, I exclude the documents from my analysis because its contents are not  
5 alleged in the complaint. But even if they were, I am not persuaded that the documents are fatal  
6 to Jones’s claim. Jones alleges that CCSD began interfering with his FLMA leave in February of  
7 2012. The medical documents the school district relies on to argue that Jones voluntarily retired  
8 are dated January 18, 2013. It is therefore possible, as Jones alleges, that CCSD somehow  
9 interfered with his FLMA rights between February of 2012 and January of 2013.

10 Nonetheless, I grant the school district’s motion to dismiss this claim because the  
11 allegations supporting it are legal conclusions couched in the form of factual allegations. For  
12 instance, Jones alleges that CCSD engaged in a “campaign of harassment, intimidation and  
13 bullying.” (Dkt. #1 at ¶ 47). In support, he alleges that CCSD refused to honor his requests for  
14 time off, ignored his requests for time off, and gave him “the run around.” (*Id.*) But he does not  
15 allege any dates on which this occurred, identify the supervisors or other employees who harassed  
16 him, or cite any other facts to support this claim. Because these allegations stop “short of the line  
17 between possibility and plausibility,” I dismiss this claim with leave to amend. *Iqbal*, 556 U.S. at  
18 678.

19 **B. Jones’s claim for constructive discharge is dismissed with leave to amend.**

20 Jones next alleges that CCSD constructively discharged him by forcing him to sign a  
21 CCF-164 form,<sup>1</sup> which was presented to him because CCSD had “no other employment options”  
22 for him. (Dkt. #1 at ¶¶ 58, 59.) CCSD asserts that Jones’s allegations are not factually plausible  
23 and, even if they were, they would not state a claim for constructive discharge.

24 “[C]onstructive discharge occurs when the working conditions deteriorate, as a result of  
25 discrimination, to the point that they become sufficiently extraordinary and egregious to  
26 overcome the normal motivation of a competent, diligent, and reasonable employee to remain on

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28 <sup>1</sup> A CCF-164 form is a notice of removal or retirement report.

1 the job to earn a livelihood and to serve his or her employer.” *Poland v. Chertoff*, 494 F.3d 1174,  
2 1184 (9th Cir. 2007) (quoting *Brooks v. City of San Mateo*, 229 F.3d 917, 930 (9th Cir. 2000)).  
3 Although Jones’s complaint alleges that the school district engaged in a “campaign of  
4 harassment, intimidation and bullying,” it does not allege any facts that would allow me to draw  
5 the inference that his working conditions were “so intolerable that he felt compelled to resign.”  
6 *Poland*, 494 F.3d at 1184. I therefore dismiss Jones’s constructive discharge claim but grant him  
7 leave to amend if he can allege dates, identities, and facts surrounding the alleged harassment.

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9 **C. Jones’s claim for intentional infliction of emotional distress is dismissed with  
leave to amend.**

10 Jones alleges that CCSD intentionally inflicted emotional distress upon him. To state a  
11 claim for intentional infliction of emotional distress, a plaintiff must allege (1) extreme and  
12 outrageous conduct with either the intention of, or reckless disregard for, causing emotional  
13 distress, (2) the plaintiff’s having suffered severe or extreme emotional distress, and (3) actual or  
14 proximate causation. *Barmettler v. Reno Air, Inc.*, 956 P.2d 1382, 1386 (1998) (quoting *Star v.*  
15 *Rabello*, 625 P.2d 90, 91–92 (1981)). Jones’s allegations in support of this claim are largely  
16 conclusory. Nonetheless, his complaint contains allegations of systematic harassment that could  
17 support this claim if properly pleaded. I therefore dismiss Jones’s intentional infliction of  
18 emotional distress claim with leave to amend.

19 **D. Jones’s request for punitive damages is dismissed with prejudice.**

20 CCSD moves to dismiss Jones’s claim for punitive damages because punitive damages  
21 cannot be awarded against a political subdivision of the State of Nevada, which CCSD is. *See*  
22 Nev. Rev. Stat. § 386.010(2); 41.035(1). Jones concedes that punitive damages are not  
23 recoverable on any of his claims. I therefore dismiss Jones’s punitive damages claim with  
24 prejudice.

25 **III. CONCLUSION**

26 IT IS THEREFORE ORDERED that the Clark County School District’s motion to  
27 dismiss (**Dkt. #11**) is **GRANTED**. Plaintiff Randy Jones may file an amended complaint curing  
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1 the deficiencies in claims of FLMA violation, constructive discharge, and intentional infliction of  
2 emotional distress claim by April 21, 2016. If he fails to do so, the case will proceed on his  
3 remaining claims. Jones's request for punitive damages is dismissed with prejudice.

4 DATED this 31<sup>st</sup> day of March, 2016.



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6 ANDREW P. GORDON  
7 UNITED STATES DISTRICT JUDGE  
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